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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

J.L., a minor by and through his
guardian and next friend,
S.L.,
c/o Stinson Law Associates, P.C.
P.O. Box 1340
Bryn Mawr, Pennsylvania 19010-7340,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
EDUCATION; EUGENE W. HICKOK,
JR., Secretary of Education, Pennsylvania
Department of Education; LAMPETER-
STRASBURG SCHOOL DISTRICT;
DONNA WERT, Teacher, Lebanon-
Lancaster Intermediate Unit #13, Assigned
to Solanco School District; SOLANCO
SCHOOL DISTRICT; THOMAS E.
BRACKBILL, Principal, Solanco School
District; LANCASTER-LEBANON
INTERMEDIATE UNIT #13; HUMAN
SERVICES CONSULTANTS INC;
JANELLE SWEIGART, Therapeutic
Support Staff, Human Services
Consultants,

Defendants.

CIVIL ACTION

NO. 01-CV-328

(Judge Kane)

FILED
SCRANTON

AUG 10 2001

PER

DEPUTY CLERK

**DEFENDANTS, SOLANCO SCHOOL DISTRICT AND THOMAS E. BRACKBILL'S
ANSWER TO PLAINTIFFS' COMPLAINT WITH AFFIRMATIVE DEFENSES**

AND NOW, come the Defendants, Solanco School District and Thomas E. Brackbill, by
and through their attorneys, Sweet, Stevens, Tucker & Katz LLP and the Buzgon Davis Law
Offices, to present the following Answer to Plaintiffs' Complaint together with Affirmative
Defenses.

1. Denied. It is denied that this Court has original jurisdiction of this case. To the contrary, Plaintiff seeks recovery under the Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq.* (the “IDEA”). Before a plaintiff seeking to recover under the IDEA can file suit in federal court, he or she must first secure an administrative special education due process hearing and exhaust the opportunity for administrative appeal. Federal Courts are without jurisdiction of IDEA cases before plaintiffs exhaust the administrative process.
2. Denied. It is denied that this Court has original jurisdiction or supplemental jurisdiction over the claims in Plaintiff’s Complaint.
3. Denied. It is denied that this venue is appropriate in this Court. To the contrary, all claims contained herein arose with the venue of the United States District Court for the Eastern District of Pennsylvania.
4. Admitted in part, denied in part. It is admitted that the correspondence dated February 15, 2001 was carbon-copied to the Solanco School District and Thomas E. Brackbill. The remaining allegations in paragraph 4 of the Complaint are denied.
5. Admitted in part, denied in part. It is admitted that Plaintiff, J.L. is 9 and was a resident of the Lampeter-Strassburg School District. The remaining allegations in paragraph 5 of the Complaint are denied.
6. Admitted.
7. Admitted. By way of clarification, Eugene W. Hickock, Jr., is the former Secretary of Education in the Commonwealth of Pennsylvania.
8. Admitted.

9. Admitted in part, denied in part. It is admitted that Donna Wert is employed by the Lancaster Lebanon Intermediate Unit #13. The remaining allegations of paragraph 9 of the Complaint are denied.
10. Admitted in part, denied in part. It is admitted that Solanco School District is a local governmental agency subject to the provisions of the Pennsylvania Public School Code. The remaining allegations of paragraph 10 of the Complaint are denied.
11. Admitted in part, denied in part. It is admitted that the Intermediate Unit #13 is a regional education agency and contracted with the Lampeter-Strasburg School District to provide services to J.L. The remaining allegations of paragraph 11 of the Complaint are denied. It is denied that the Intermediate Unit #13 contracted with the Solanco School District to provide services for J.L. because J.L. is not a resident of the Solanco School District and the Solanco School District is not the Local Education Agency, in accordance with the IDEA, responsible to provide an education to J.L.
12. Admitted in part, denied in part. It is admitted that Thomas E. Brackbill is a professional employee, employed as a Principal by the Solanco School District. The remaining allegations in paragraph 12 of the Complaint are denied.
13. Denied.
14. Denied. It is denied that Human Services Consultants provided services to the Solanco School District. All remaining allegations in paragraph 14 of the Complaint are also denied.
15. Denied.
16. Denied.
17. Denied.

18. Denied. To the contrary, on September 7, 2000, the Intermediate Unit #13 provided educational services to Plaintiff, J.L., at a classroom located at the Providence Elementary School in the Solanco School District.

19-24. Denied.

25. Denied. The Principal, Thomas E. Brackbill, was not in the building at the time in question.

26. Denied.

27. Denied.

FIRST CAUSE OF ACTION

28-31. Denied.

SECOND CAUSE OF ACTION

32-37. Denied.

THIRD CAUSE OF ACTION

38-42. Denied.

FOURTH CAUSE OF ACTION

43-47. Denied.

FIFTH CAUSE OF ACTION

48-57. Denied.

SIXTH CAUSE OF ACTION

58-59. Denied.

SEVENTH CAUSE OF ACTION

60-61. Denied.

EIGHTH CAUSE OF ACTION

62-63. Denied. The Solanco School District and Thomas E. Brackbill are absolutely immune from claims of negligence pursuant to the Political Subdivision Tort Claims Act.

WHEREFORE, the Solanco School District and Thomas E. Brackbill, respectfully request that the Plaintiff's Complaint dismissed and this Court grant all other relief to which the Defendants may be entitled.

AFFIRMATIVE DEFENSES

First Affirmative Defense

This Court does not have jurisdiction over this case.

Second Affirmative Defense

This proceeding is not properly venued in the Federal District Court for the Middle District of Pennsylvania.

Third Affirmative Defense

The School District and Thomas E. Brackbill are immune from liability for Plaintiff's state law tort claims pursuant to the Political Subdivision Tort Claims Act.

Fourth Affirmative Defense

Thomas E. Brackbill is entitled to qualified immunity accorded to public employees.

Fifth Affirmative Defense

The Plaintiff, J.L., is not a qualified individual with a disability.

Sixth Affirmative Defense

The Solanco School District is not the Local Educational Agency responsible for providing an education to Plaintiff, J.L.

Seventh Affirmative Defense

Plaintiff has failed to exhaust administrative remedies available pursuant to the Individuals with Disabilities Education Act.

Eighth Affirmative Defense

To the extent that Plaintiff's Complaint fails to state claims upon which relief can be granted against the Defendant those claims should be dismissed.

Ninth Affirmative Defense

The Plaintiff was offered and provided a free appropriate public education at all times.

Tenth Affirmative Defense

Plaintiff failed to timely notify the District of any objection or disagreement with the IEP.

Eleventh Affirmative Defense

Plaintiff has failed and refused to mitigate damages.

Twelfth Affirmative Defense

To the extent that Plaintiff has failed to state a cause of action against the Defendant upon which relief can be granted, he cannot claim "prevailing party" status under the "IDEA," and the Attorney's fee request should be stricken.

Thirteenth Affirmative Defense

Plaintiff has failed to state a claim upon which compensatory damages, compensatory education and/or tuition reimbursement may be awarded.

Fourteenth Affirmative Defense

The Plaintiff was never excluded from participation in free appropriate public education or denied the benefits of free appropriate public education.

Fifteenth Affirmative Defense

Plaintiff's causes of action should be dismissed to the extent that they are barred by laches, waiver or the applicable statute of limitations.

Sixteenth Affirmative Defense

The Plaintiff was provided the opportunity to receive meaningful educational benefit.

RESERVATION OF DEFENSES

The District shall rely upon such further affirmative defenses that may become apparent during the course of discovery and therefore specifically reserves the right to amend this Answer with Affirmative Defenses to assert the same.

Respectfully submitted,

BUZGON DAVIS LAW OFFICES

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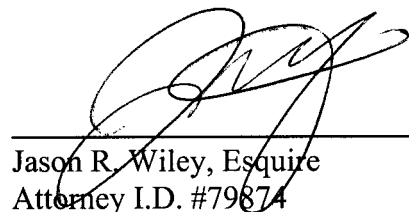
VERIFICATION

I, Jason R. Wiley, Esquire, attorney for Defendants, Solanco School District and Thomas E. Brackbill, hereby verify that the facts set forth in the foregoing Answer to Plaintiff's Complaint with Affirmative Defenses are true and correct to the best of my knowledge, information and belief and understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

SWEET, SWEET, TUCKER & KATZ LLP

Date: August 6, 2001

By:



Jason R. Wiley, Esquire
Attorney I.D. #79874

Attorney for Defendants,
Solanco School District and
Thomas E. Brackbill

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**J.L., a minor by and through his
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NO. 01-CV-328

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CERTIFICATE OF SERVICE

I, Timothy J. Huber, Esquire, counsel for Defendants, Solanco School District and Thomas E. Brackbill, hereby certify that a true and correct copy of the foregoing Answer to Plaintiffs' Complaint with Affirmative Defenses was mailed to the following counsel at the following address, via U.S. Mail, on this date:

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Stinson Law Associates
17 Weirwood Road
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Robert M. Frankhouser, Jr.
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Lancaster, Pennsylvania 17602-2782

BUZGON DAVIS LAW OFFICES

Date: August 8, 2001

By: 

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